

CHAPTER 18

RESTITUTION

18.1 GENERALLY

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18.1 GENERALLY

Restitution is defined as an;

Act of restoring; restoration; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification.

Black's Law Dictionary

The Utah State Legislature has codified a restitution scheme intended to remediate the effects of a defendant's criminal behavior on innocent victims of that behavior. Utah Code Ann. §77-38a-302 states:

77-38a-302. Restitution criteria.

(1) When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition.

An award of restitution is not an additional punishment; rather it is clear from the legislative scheme that restitution is not a "punishment" but a civil penalty whose purpose is entirely remedial, i.e., to compensate victims for the harm caused by a defendant and to spare victims the time, expense, and emotional difficulties of separate civil litigation to recover damages from the defendant. See *Monson v. Carver*, 928 P.2d 1017 (Utah 1996).

Orders of restitution arising from criminal cases are not dischargeable in bankruptcy and are not affected by the death of the defendant. See generally, *State v. Christensen*, 866 P.2d 533 (Utah 1993).

Furthermore, although a defendant's probation may be terminated (either successfully or unsuccessfully), an order of restitution will continue until paid in full. See *State v. Allen*, 15 P.3d 110 (Utah Ct. App. 2000)

18.2 DEFINITIONS

The statutory definitions relating to restitution are as follows:

77-38a-102. Definitions.

As used in this chapter:

(1) "Conviction" includes a:

- (a) judgment of guilt;
- (b) a plea of guilty; or
- (c) a plea of no contest.

(2) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(3) "Department" means the Department of Corrections.

(4) "Diversion" means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program, make restitution to the victim, or fulfill some other condition.

(5) "Party" means the prosecutor, defendant, or department involved in a prosecution.

(6) "Pecuniary damages" means all demonstrable economic injury, whether or not yet incurred, which a person could recover in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the fair market value of property taken, destroyed, broken, or

otherwise harmed, and losses including lost earnings and medical expenses, but excludes punitive or exemplary damages and pain and suffering.

(7) "Plea agreement" means an agreement entered between the prosecution and defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.

(8) "Plea in abeyance" means an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

(9) "Plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(10) "Plea disposition" means an agreement entered into between the prosecution and defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.

(11) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including prejudgment interest, the accrual of interest from the time of sentencing, insured damages, reimbursement for payment of a reward, and payment for expenses to a governmental entity for extradition or transportation and as may be further defined by law.

(12) (a) "Reward" means a sum of money:

(i) offered to the public for information leading to the arrest and conviction of an offender; and

(ii) that has been paid to a person or persons who provide this information, except that the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

(b) "Reward" does not include any amount paid in excess of the sum offered to the public.

(13) "Screening" means the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted.

(14) (a) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(b) "Victim" may not include a codefendant or accomplice.

77-38a-302. Restitution criteria.

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(a) "Complete restitution" means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing.

18.3 APPLICABILITY TO DUI OFFENSES

The only caveat to the applicability of restitution to impaired driving cases is that; due to the strict liability nature of DUI, the loss suffered by a victim must have been proximately caused by the defendant's criminal action. *See generally, State v. Robinson*, 860 P.2d 979 (Utah Ct. App. 1973).

18.4 INSURANCE COMPANY AS VICTIM

Insurance companies had previously been excluded from the definition of victim for purposes of restitution. *State v. Westerman*, 945 P.2d 695 (Utah Ct. App. 1997). However, this was overruled by statute, which now reads;

76-3-201(1)(e) (i) "Victim" means **any person** who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

Prosecutors should endeavor to determine if any insurance payments have been made to a victim and attempt to convince the court to order repayment to the insurance company.

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